

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
NEWARK VICINAGE**

GRILLO'S PICKLES, INC.,

Plaintiff,

v.

PATRIOT PICKLE INC., ARKK FOOD COMPANY, and WAHLBURGERS I, LLC,

Defendants.

Case No: 2:23-cv-00011-AME-MCA

DECLARATION OF BILL MCENTEE

I, BILL MCENTEE, declare as follows, pursuant to 28 U.S.C. § 1746:

1. I am the President and CEO of Patriot Pickle Inc. ("Patriot Pickle"), a company that manufactures pickles for distribution to retailers and restaurants.

2. I have been the President and CEO of Patriot Pickle, a privately-held pickle manufacturer, since the company was founded 18 years ago. I am responsible for overseeing Patriot Pickle's financial and operational functions. In this capacity, I coordinate with Patriot Pickle's manufacturing, financial, and customer service teams, as well as the warehouse managers who run Patriot Pickle's storage facilities, which are located in Wayne and Camden, New Jersey.

3. I submit this declaration in support of Patriot Pickle's motion to dismiss and opposition to the plaintiff's request for injunctive relief.

4. I submit this declaration based upon my personal knowledge of the facts set forth herein, upon information supplied to me by others associated with Patriot Pickle, upon my

review of relevant documents, and upon my experience and knowledge of Patriot Pickle's operations. Patriot Pickle's manufacturing facility is regulated in accordance with the regulations promulgated by the Food and Drug Administration ("FDA"). In all 18 years of its operation, Patriot Pickle has never received any findings of non-compliance from the FDA.

5. Patriot Pickle is Safe Quality Food ("SQF") certified, and also has a Hazard Analysis Critical Control Point ("HACCP") certification. The SQF certification reflects a rigorous food safety and quality program recognized by retailers, brand owners and food service providers worldwide. Recognized by the Global Food Safety Initiative ("GFSI"), the SQF family of food safety and quality codes are designed to meet industry, customer, and regulatory requirements for all sectors of the food supply chain, from the farm to retail stores.

6. The HACCP certification is an international recognition awarded to food processors and manufacturers with a comprehensive HACCP plan. A certification on HACCP implementation is the culmination of a food business's and team's efforts to uphold food safety to the highest degree, and reflects a food establishment's commitment to ensure that food is being prepared, transferred and stored safely and healthily.

7. Patriot Pickle conducts a third-party audit annually that imposes more stringent requirements than the FDA and receives a scorecard in connection with each audit. On its three most recent food safety audits, Patriot Pickle earned—on a 100-point scale—a score of 94 in 2020, 95 in 2021, and 98 in 2022.

8. Prior to this matter, Patriot Pickle had never received any complaints from customers or the businesses with whom it contracts regarding any ingredients in the pickles it manufactures.

9. Patriot Pickle sources cucumbers directly from growers and manufactures a variety of pickles according to Patriot Pickles' customers' specifications. Patriot Pickle produces both fresh, all-natural pickles without artificial preservatives and standard pickles with artificial preservatives. These pickles are subject to different manufacturing processes, such that the fresh, refrigerated pickles are manufactured with only water, salt, vinegar, and other natural ingredients.

10. Prior to packing pickles into containers for distribution to Patriot Pickles' customers, the pickles are stored in totes. If the pickles are to be packed on the same day, the totes are filled with water. However, if the pickles will not be packed until the following day, the totes are filled with brine, which is a mixture of water, salt, vinegar, and other natural ingredients ("Transportation Brine") before packaging in containers at Patriot Pickle for shipment to distributors and retailers.

11. Patriot Pickle manufactures pickles for ARKK Food Company ("ARKK"), who has a license agreement with Wahlburgers I, LLC ("Wahlburgers") to manufacture, package, and ship pickles under the Wahlburgers name using Wahlburgers' specifications.

12. Patriot Pickle's manufacturing process for the pickles it manufactures for ARKK does not include adding sodium benzoate or any other preservative. However, some of the pickles previously manufactured for ARKK, which were not packed the same day, were temporarily stored for a period of time in Transportation Brine that contained some sodium benzoate, before they were packed in containers and shipped to ARKK.

13. As established by shelf-life studies conducted to set product-specific expiration dates, Wahlburgers' pickles stored under 38-degree refrigeration have a 120-day shelf-life. Use

of artificial preservatives could easily double that shelf-life, but Wahlburgers' pickles have always carried a 120-day expiration date based on testing of artificial-preservative-free pickles.

14. On January 3, 2023, I was notified by Ryan Jahnke of ARKK that Grillo's Pickles, Inc. ("Grillo's Pickles") had filed a Complaint against Patriot Pickle, ARKK, and Wahlburgers, alleging that sodium benzoate was found in the pickles Patriot Pickle packed for ARKK. Pursuant to Patriot Pickle's practices, Food Safety Manager, Zelma Palomino, documented a Customer Complaint form detailing the complaint received. A true and correct copy of the completed Customer Complaint form is attached as Exhibit A.

15. Also on January 3, 2023, Patriot Pickle paused production of Wahlburgers' pickles pending resolution of its internal review.

16. On January 4, 2023, I met with managers of the Patriot Pickle Quality Assurance ("QA") team, Ms. Palomino, Plant Manager Jim McKnight, and Chief Operating Officer Adam Ricci to discuss the allegations relating to sodium benzoate in the Complaint. *See* Exhibit A (Customer Complaint form).

17. On January 5, 2023, Ms. Palomino issued a Corrective Action Log, documenting the issue and describing the corrective action taken. *See* Corrective Action Log, a true and correct copy of which is annexed as Exhibit B. As Ms. Palomino noted in the Corrective Action Log, the levels of sodium benzoate in the contaminated pickles were well below FDA safety guidelines and would not have been a risk to consumers. *See* Exhibit B ("There is no risk to consumers").

18. As shown in the Corrective Action Log, although Patriot Pickle had already implemented corrective action, the following measures were formalized as of January 5, 2023 in order to prevent any trace of sodium benzoate occurring in fresh pickles due to the

Transportation Brine: creation of (1) a dedicated tank for All-Natural Brine; (2) a new “All-Natural Brine fill procedure for transportation”; (3) marking totes in red and black to indicate the type of brine; and (4) training Patriot Pickle personnel on new procedures. *See Exhibit B.*

19. Patriot Pickle also implemented a new Tank Cleaning Protocol and All-Natural Transportation Brine Procedure to ensure fresh pickles would not be exposed to sodium benzoate prior to being packed in containers with brine that meets customers’ specifications. *See true and correct copies of the Tank Cleaning Protocol and All-Natural Transportation Brine Procedure, annexed hereto as Exhibits C and D, respectively.*

20. Patriot Pickles’ procedures with regard to all pickles sold in the refrigerated section of grocery stores, including Wahlburgers pickles, comply with the requirements identified in Exhibits C and D.

21. Testing conducted on Wahlburgers pickles manufactured under the new procedures revealed no detectable amount of sodium benzoate. A true and correct copy of a laboratory Certificate of Analysis prepared by Certified Laboratories is annexed as Exhibit E.

I declare under penalty of perjury that the foregoing is true and correct.

Executed within the United States on February 6,
2023.



BILL MCENTEE

EXHIBITS

EXHIBIT A

Parried Pickle Inc.	Document No: 2.1.3a
Revised By: Zelma Palomino	Date Issued: 02/01/2010 Date Revised: 01/03/23

Customer Complaint Form

Name: ARKK/Wahlburgers Date: 01/03/23 Complaint #: 23001

Name of Contact: _____ Time of Notification: 8:05 PM

Exact Statement of Contact : Misleading consumers and retailers by labeling and marketing Wahlburgers Pickles as "Fresh", "all natural" and containing "no preservatives" when lab tests indicate Wahlburgers pickles contain "considerable amounts of benzoic acid, which is often added into foods via Sodium benzoate" which is not listed on the label.

Product(s) Involved

Product Code	Size	Product Description	Units	Order #	SHIP DATE	Carrier	Pack DATE	LOT
		Wahlburger Retail						

Team Members Called: _____ Date _____ Time _____

QA Manager:	<u>Zelma Palomino</u>	<u>4-Jan</u>	<u>9:00 AM</u>
	<u>Jim McKnight</u>	<u>4-Jan</u>	<u>9:00 AM</u>
	<u>Bill McEntee</u>	<u>4-Jan</u>	<u>9:00 AM</u>
	<u>Adam Ricci</u>	<u>4-Jan</u>	<u>9:00 AM</u>

Nature of problem: Sodium Benzoate in Product not declared on label

How Problem was discovered: E-mail from Ryan Jahnke

Location of Product: Stores Amount in Plant: Product Retainer

In Plant corrective actions if any _____

How incident was resolved: See Corrective action 23001

Date Completed: 1/5/2023

Filled by: Amanda Mackey Revised By: Zelma Palomino

EXHIBIT B

Patriot Pickle Inc.	Document No 2.5.3a	Corrective Action # 23001
Issued by: Zelma Palomino	Date Issued : 1/5/2023	

Topic: Corrective Action Log

CUSTOMER: ARKK/WAHLBURGERS

PRODUCT : Wahlburger Pickles

DATE : 1/5/2023

1) Problem / Potential Risk

Customer stated that Product has Sodium Benzoate and it was not declared on the label

There is no risk to consumers

2) Root Cause Analysis

- Transportation Brine contains Sodium Benzoate

3) Corrective Action:

- We have dedicated a tank specific for this All Natural Brine
- We have developed the All-Natural Brine fill procedure for transportation
- All Natural Totes are now marked with red ink. All others are in black ink.
- Trained Personell on new procedures

SIGNED: 
Zelma Palomino

DATE: 1/5/2023

EXHIBIT C

Patriot Pickle Inc.	Document No 1.2.3.8T	Number of Pages 1
Issued by: Zelma Palomino	Date Issued : 4/13/2015	
Topic: Tank Cleaning Protocol	Last Revised: 1/5/2023	

TANK CLEANING PROTOCOL

Product Used:

Water

Procedure: Dedicated tank to All-Natural Products

1. Pre rinse tank.
2. Drain tank.
3. Rinse tank and drain again.
4. Tank labeled in red "All-Natural Brine Only".

Frequency: Before making All-Natural Brine.

Responsible: Brine Batch Personnel.

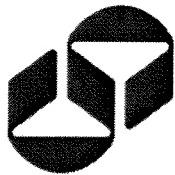
EXHIBIT D

Patriot Pickle Inc.	Document No 1.2.5.8	Number of Pages 1
Issued by: Zelma Palomino	Date Issued : 4/13/2015	
Topic: Tank Cleaning Protocol	Last Revised: 1/5/2023	

ALL-NATURAL TRANSPORTATION BRINE PROCEDURE

1. Follow Brine Tank Cleaning Protocol (See Doc. # 1.2.5.8T)
2. Mix batch following brine mixing recipe (See Work Instructions book)
3. Pump mixed batch into All-Natural tank marked in red.
4. Let Brine flush for 30 seconds before filling containers.
5. Wash and rinse Fresh cucumbers
6. Fill Sanitized tote with cleaned cucumbers
7. Top off cucumbers with All-natural brine.
8. Label, date, and store tote in Refrigerator (Red Ink)
9. Proceed to packing.

EXHIBIT E



Certified Laboratories

Full Service Laboratory • Established 1926

Certificate of Analysis

*PATRIOT PICKLE, INC.
20 EDISON DRIVE
WAYNE, NJ 07470
*ATT: ZELMA PALOMINO

REPORT #: 1221165
PROJECT ID: NY06770-2302-001
REPORT DATE: 2/2/23
PRINT DATE: 2/2/23

LAB #: 4140194

DATE RECEIVED: 2/1/23

*PRODUCT: ALL NATURAL KOSHER DILL SPEARS
*PACKAGE: IN SEALED PACKAGE
*SAMPLE ID: 1

<u>ANALYTE</u>	<u>RESULT UNITS</u>	<u>METHOD REFERENCE</u>
PRESERVATIVES PROFILE SODIUM BENZOATE	<20 ppm	JAOAC V70, P.892 (1987) (MODIFIED)

Julie Tritt

Julie Tritt
Regional Director

*The indicated information has been provided by the client to Certified Laboratories

END OF REPORT

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